

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

LORI FITZGERALD, *et al.*, individually and  
on behalf of others similarly situated,

Plaintiffs,

v.

JOSEPH WILDCAT SR., *et al.*,

Defendants.

Case No. 3:20-cv-00044 (NKM)

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION  
FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

Plaintiffs, by counsel, respectfully submit this response to Defendants' Motion for Leave to File Supplemental Authority (ECF No. 92). As indicated in the Motion, Plaintiffs do not oppose Defendants' request to file the supplemental authority provided that the Court also consider other opinions that have been published since the filing of Plaintiffs' Opposition to Defendants' Motion to Dismiss (ECF No. 55), which was filed on December 18, 2020.

Of particular relevance, there have been multiple opinions denying Rule 12(b)(6) motions to dismiss in comparable cases. *See, e.g., Smith v. Martorello*, 2021 WL 1257941 (D. Or. Jan. 5, 2021) (finding the plaintiff adequately alleged RICO, unjust enrichment, and injunctive relief claims against an individual involved in a tribal lending enterprise) (attached as Ex. 1), *report and recommendation adopted as modified*, 2021 WL 981491 (D. Or. Mar. 16, 2021) (attached as Ex. 2); *Galloway v. Martorello*, No. 3:19-cv-314, ECF No. 375 (E.D. Va. Sept. 23, 2021) (finding the plaintiffs adequately alleged RICO, unjust enrichment, and usury claims against a family member who assisted his brother with a tribal lending scheme) (attached as Ex. 3); *Gibbs v. Elevate Credit*,

*Inc.*, 2021 WL 4851066 (E.D. Va. Oct. 17, 2021) (attached as Ex. 4) (finding that the plaintiff adequately alleged RICO claims against a company who provided services to a tribal lending scheme); *Duggan v. Martorello*, 2022 WL 952183 (D. Mass. Mar. 30, 2022) (finding the plaintiff adequately alleged RICO, unjust enrichment, usury, and injunctive relief claims against an individual involved in a tribal lending enterprise) (attached as Ex. 5); *see also Brice v. Haynes Investments, LLC*, 548 F. Supp. 3d 882 (N.D. Cal. July 13, 2021) (denying summary judgment on RICO, usury, and unjust enrichment claims against investors in tribal lending scheme) (attached as Ex. 6).

And with respect to Defendants' request that the Court strike the class allegations, Plaintiffs further ask this Court to consider three decisions granting class certification of comparable claims—all over the objection of the defendants in those cases. *Brice v. Haynes Invs., LLC*, 2021 WL 1916466, at \*1 (N.D. Cal. Apr. 23, 2021) (attached as Ex. 7); *Williams v. Big Picture Loans, LLC*, 339 F.R.D. 46 (E.D. Va. July 20, 2021) (attached as Ex. 8); *Gibbs v. Stinson*, 2021 WL 4812451 (E.D. Va. Oct. 14, 2021) (attached as Ex. 9).

Because these decisions were issued in similar cases after the filing of Plaintiffs' brief, Plaintiffs request that the Court consider these decisions if it considers *Manago*.

Respectfully submitted,  
**PLAINTIFFS**

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